

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0536 ITC

Gross Income Tax

For Tax Period: 1993-1996 Penalty

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration - Penalty

Authority: IC 6-8-1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the imposition of the penalty.

STATEMENT OF FACTS

The taxpayer contracts with insurance companies to provide physical examinations for life insurance applicants. Taxpayer has an Indiana contractor to conduct physical examinations through authorized medical and paramedical personal and allows the contractor to use their name, symbols and trademarks as well as the Company's systems of operations in various Indiana counties. The contractor's business is conducted under the name of the taxpayer. All examination vouchers are sent to the taxpayer. All examination vouchers are sent to the taxpayer at the end of each business day. Contractor is not allowed to bill the client and any monies, if received by the contractor must be forwarded to the taxpayer on the day of receipt. The taxpayer remunerates contractor at 85% for all paramedical services and 80% for all inspection services. Taxpayer issues Form 1099 – MISC at the end of each calendar year to the contractor.

I. Tax Administration – Negligence penalty.

DISCUSSION

The taxpayer protests the imposition of the negligence penalty and states that based on its interpretation of the tax code, taxpayer is not liable for gross income taxes on receipts received on behalf of a third party. The percentage of the receipts paid to Contractors was for the actual services the contractor rendered in Indiana, therefore not income to the taxpayer. Taxpayer retains a percentage of the receipts for billing and collection efforts, and a licensing fee for contractor's use of taxpayers name. Taxpayer believe the percentage of receipts paid to contractor does not constitute taxable income. In light of the defense, taxpayer maintains it was not negligent in protesting the alleged taxes due.

The audit completed on May 16, 1997 for fiscal years 1994 through 1996 indicates tax was correctly paid in 1994 after an audit was completed on March 18, 1994. No gross income tax was remitted for 1995 and 1996. The audit completed March 18, 1994 indicates compliance in 1991 and 1992 but in not 1993 with a notation that the issue was also present in an audit completed on January 10, 1991.

Taxpayer had two prior audits which addressed the issue therefore the penalty is proper.

FINDINGS

The taxpayer's protest is denied.